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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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HENDRICKS, KEITH D

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1761

DATE MAILED: 09/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/089,422	JEONG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Keith Hendricks	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_ .

2a) This action is **FINAL**.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

4) Claim(s) 1-6 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_ is/are allowed.

6) Claim(s) 1,2,4 and 5 is/are rejected.

7) Claim(s) 3 and 6 is/are objected to.

8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 13 November 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_ .  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 and 10.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_ .

5) Notice of Informal Patent Application (PTO-152)

6) Other:

## **DETAILED ACTION**

### ***Claim Objections***

Claims 1 and 4-6 are objected to because of the following informalities. Appropriate correction is required.

#### **Claim 1:**

- Line 2 of part (a), "form" should be "from".
- Lines 2-3 of part (a), the phrase "a group consisting of" should be "the group consisting of."
- Part (b), "the bean soup" lacks a clear antecedent basis, and thus should be "a bean soup."
- Similarly in part (b), the phrase "pulverizing the soaked soy bean" lacks a clear antecedent basis, and is suggested to be amended to "pulverizing soy beans soaked".

#### **Claim 4:**

- The phrase "according to method in any one of claim 1" is suggested to be amended to "according to the method of claim 1."

#### **Claim 5:**

- See the above applicable objections for claim 1.

#### **Claim 6:**

- The first word, "beverage", should be capitalized as "Beverage".

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding part (d) of claim 5, the step of mixing the syrup or fruit juice "with the bean soup remaining after preparing bean curds of step (c)" is indefinite and confusing. The claim is incomplete for

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omitting essential structural cooperative relationships of the elements, such omission amounting to a gap between the necessary elements. See MPEP § 2172.01. It is unclear as to how the soup remains following the preparation of the bean curds. The premise of the invention is understood to be the formation of bean curds coagulated from the bean soup by the addition of the lactic acid bacteria culture (of fermented vegetables). Clarification and/or correction of the claim is requested.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nsofor et al. (*J. Sci. Food Agric.* 1992, of record).

Nsofor et al. disclose the production of a soy yogurt made with starter cultures derived from fermented tropical vegetables. Various vegetables were mixed with salt and soaked in water. Soy beans were soaked with sugar and a salt ( $\text{NaHCO}_3$ ) solution, blanched, pulverized and filtered. The resultant soya milk (soup) was stored "for a few days in the refrigerator at 5 +/- 2°C." The soya milk (soup) was then inoculated "with exudate from each fermented vegetable", containing lactic acid bacteria, and incubated at 37°C. Subcultures of the fermented vegetable compositions were fermented at 42°C. See page 516.

The reference does not disclose the direct cooling of the soya milk (soup) at 40°C. One of ordinary skill in the art would have found it obvious, however, to have performed this step directly, given the advantage of eliminating the refrigeration storage step and reducing the production time of the composition as a whole. As the various fermented vegetable compositions of the reference were fermented at 42°C, and the inoculated soya milk (soup) was incubated at 37°C, the condensed step of cooling and inoculating the soya milk with the fermented vegetable lactic acid bacterial culture at 40°C, would not have involved an inventive step in the art. There would appear to be no patentable difference between the disclosed method of the reference and that instantly claimed, as the cooling and incubation of

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the soya milk at 40°C would have been an obvious efficient modification, and the 40°C point falls directly within the small range of temperatures utilized by the reference.

Regarding claim 2, the reference discusses the specific types of lactic bacteria, including *Lactobacillus* and *Leuconostoc* species (pg. 517 col. 1; and pg. 518), both of which are found within conventional kimchi fermentations. It is noted that instant claim 2 does not recite a specific genus or species of lactic acid bacteria. While the reference states that the precise identification of the species was "in progress" at the time of publication, "*Lactobacillus* species plus other acid-producing cocci... are strongly suspected." Thus, absent any clear and convincing evidence and/or arguments to the contrary, the lactic acid bacteria found within the fermentation culture disclosed by the reference, would be the same as those found within the fermentation culture produced by the steps of the instant claims.

### ***Conclusion***

- Claims 3 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
- Claims 3 and 5-6 are free of the prior art of record. Regarding claim 3, while the individual fermentation of the recited vegetables and fruits were known in the art, there was no teaching or suggestion of the use of such materials within the instantly-claimed method. Regarding claims 5-6, there is no teaching or suggestion within Nsofor et al. or the remaining prior art, to combine the disclosed soybean curd with a syrup or fruit juice to yield the claimed beverage.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



KEITH HENDRICKS  
PRIMARY EXAMINER